IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII, Rule 32 (2) (b)
Description of case

Writ Petition No. 257 of 2004(M/S)

Administrator General Uttaranchal…… Petitioner.

Versus

II-nd Additional District Judge
Dehradun and another …… Respondents

Date of decision: 22, November 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the Judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 257 of 2004 (M/S)

Administrator General of Uttaranchal,
Office at 233- Naya Bazar, Tallital,
Nainital ……. Petitioner

Versus

1. **Additional District Judge 2nd, Dehradun**
   District Dehradun.
2. **Swami Omkaranand Saraswati Charitable Trust,**
   Munni Ki Reti, P.O. Shivanand Nagar,
   District- Tehri Garhwal through its alleged President,
   And Mukhya Swami, Swami Vishweshawranand

…….. Respondents

Mr. Lok Pal Singh, learned counsel for the petitioner.
Mr. Sandeep Tandon, Advocate assisted by
Mr. Himanshu Goswami, leaned counsel for respondent No. 2

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 226/ 227 of the Constitution of India, the petitioner has challenged the impugned orders dated 24.08.2001 (copy Annexure-5 to the writ petition) and 06.01.2004 (copy Annexure-12 to the writ petition) and sought direction to allow application 78-C2 moved in Testamentary Case No. 60 of 2001 pending before District Court at Dehradun.

2) Brief facts of the case as narrated in the writ petition are that one Swami Omkaranand Saraswati (for brevity hereinafter the Swami) who was resident of Austria, came to India and settled here as a disciple of Swami Shivanand. The Swami died

in Austria on 04.1.2000. He executed, before his death, in November 1987, a power of attorney (copy Annexure- 1 to the writ petition) in favour of Joseph Meichtry and got it registered. The Swami created a Trust (respondent No. 2), known as Omkaranand Saraswati Charitable Trust. A testamentary case was filed by one Mr. J.D. Jain, Advocate, Dehradun on the basis of a will purported to have been executed by the Swami in his favour. The said case was registered as Testamentary Case No. 28 of 2000 before the District Judge, Dehradun. Thereafter, another testamentary case No. 60 of 2001 (copy Annexure-2 to the writ petition) was filed by Swami Omkaranand Sarawati Charitable Trust (respondent No. 2) requesting for the Letters of Administration on the basis of another will dated 20.12.1999 purported to have been executed by the Swami in favour of the respondent No. 2. It is further alleged that the Swami left behind him huge movable and immovable properties. It is also alleged that Mr. Joseph Meichtry alias Swami Vishweshwranand withdrew an amount of rupees two crores on 22.04.2000 without any succession certificate. It is also alleged in the writ petition that an amount of Rs. 51.5 lakhs was given by Joseph Meichtry to Mr. J.D. Jain, Advocate before the testamentary case was filed by him. It is alleged by the petitioner (Administrator General of Uttaranchal) that Mr. J.D. Jain and respondent No. 2 are in collusion to grab the movable and immovable properties left behind by the Swami. In Testamentary Case No. 60 of 2001, respondent No. 2 cleverly filed an application 9C2 on 25.07.2001 (copy Annexure-4 to the writ petition) before the lower Court for dispensing with service of notice on the Administrator General on the ground that no Administrator General has been appointed in the newly created State of Uttaranchal. The said application was allowed

by the Additional District Judge vide his order dated 24.08.2001 (copy Annexure- 5 to the writ petition). According to the petitioner-Administrator General, the Swami died leaving no legal heir or representative and without executing any will. As such, property owned by him vests in State. In the testamentary case following persons namely, S/Shri Vijendra Tyagi, Devi Prasad Sharma, Sardar Singh, Mohar Singh and Smt. Parwati Sahni also filed their objections but the petitioner was not impleaded in the testamentary case. Another Testamentary Case No. 2 of 2001 was pending before this High Court in which vide order dated 14.05.2002 (copy Annexure- 6 to the writ petition), the Administration General was directed to look after the management of the property of the Swami. This Court passed an order on 19.09.2002 (copy Annexure- 8 to the writ petition) in testamentary case before it, issuing notice to the Administrator General under Section 7 and 9 of the Administrator General Act, 1963. The said order was Challenged by respondent No. 2 through Special Leave to Appeal (Civil) No. 209/2003) but the same was withdrawn on 31.03.2003 (copy Annexure- 9 to the writ petition). In the circumstances, petitioner moved an application 78C2 (copy Annexure- 10 to the writ petition) for his impleadment in the testamentary case before the District Judge, Dehradun and to recall order dated 24.08.2001 and permitting the petitioner to file his objection. The respondent No. 2 filed objections against said application 78-C2 and the petitioner's said application was rejected vide order dated 06.01.2004 (copy Annexure-12 to the writ petition), which is challenged through this writ petition.

3) The respondent no. 2 has filed its counter affidavit and raised the preliminary objections that the petition is not maintainable as the office Clerk of the Administrator General is

not an authorized person to swear the affidavit in support of the petition. It is further stated in the counter affidavit that Administrator General cannot challenge any ground nor can it claim preference over the beneficiaries in the probate proceedings, in view of Section 8 of the Administrator General Act, 1963 (hereinafter for short, the Act). It is further stated that this petition is not maintainable in view of the order dated 10th March 2003 (copy Annexure-C-2 to the counter affidavit) in Civil Misc. Application No. 5850 of 2002, whereby this Court presided by the then Chief Justice, Hon'ble A.A.Desai directed the petitioner to pursue his claim after final decision in Testamentary Case No. 60 of 2001. It is further alleged in the counter affidavit that said order was passed with the consent of the parties. It is further stated in the counter affidavit that in view of the order dated 31.10.2003 passed by this Court (copy Annexure- C-3 to the counter affidavit) the petitioner cannot make any claim in Testamentary Case No. 60 of 2001. It is also stated in the counter affidavit that the person opposing the testamentary case must have interest in the property of the deceased. Under Article 296 of the Constitution of India only the entestate property vests in the State for the want of rightful claimant or the owner. It is alleged by the respondent No. 2 that since the respondent Trust is claiming the property, as such State through Administrator general cannot interfere in the testamentary case.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit alongwith the annexures annexed thereto.

5) The short question for consideration before this Court is, whether, the impugned orders dated 24.08.2001 and 06.01.2004

suffer from any illegality and is the application 78-C2, have wrongly been rejected by the learned Lower Court?

6) Admittedly, the Swami, Omkaranand Saraswati has died on 04.01.2000 leaving huge movable and immovable properties behind him. It is also not a disputed fact that he being Sanyasi (having renounced the world) died leaving no natural heir. It is also admitted case that respondent No. 2, a Trust, is claiming the property of the deceased Swami on the basis of a will for which he filed a Testamentary Case No. 60 of 2001 before the Court at Dehradun for Letters of Administration. This Court has to see to what extent the Administrator General has right to file his objections in said case, to show if the property in question vests in the State.

7) Before further discussions, it is pertinent to mention here the relevant provisions of law. Article 296 of the Constitution of India reads as under:

> ***"296. Property accruing by escheat or lapse or as bona vacantia-*** *Subject as hereinafter provided, any property in the territory of India which if this Constitution had not come into operation, would have accrued to His Majesty or, a the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it I property situate in a State, vest in such State, and shall, if it is property situate in a State, vest in such State,* and shall, in any other case, vest in the Union:
>
> *Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or of a State, vest in the Union or in that State."*

Explanation:- In this Article, the expression "Rulers" and "Indian State" have the same meanings as in Article 363.

The relevant provisions of the Administrator General Act, 1963 read as under:-

"8. Administrator-General, entitled to letters of administration in preference to creditors, certain legatees or friends:-

The Administrator:-General of the State shall be deemed by Allahabad the Courts in the State to have a right to letters of administration other than letters pendente lite in preference to that of-

(a) A creditor, or

(b) A legatee, other than a universal legatee or a residuary legatee or the representative of a residuary legatee; or

(c) A friend of the deceased.

(1913-S.8)

[Note- Under S.8 as it now stands, the Administrator-General cannot have any preference over a universal legatee and his representative should stand on the same footing as a universal legatee for this purpose-Notes on clauses under S.O.R.]

10. Power of administrator-General to collect and hold assets where immediate action is required- *(1) Whenever any person has died leaving assets within any State exceeding rupees [fifteen thousand] in value, and the High Court for that State is satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, the High Court may, upon the application of the Administrator-General or of any person interested in such assets or in the due administration thereof, forth-with direct the Administrator-General-*

(a) to collect and take possession of such assets, and

(b) to hold, deposit, realize, sell or invest the same according to the directions of the High Court, and, in default of any such directions, according to the provisions of this Act so far as the same are applicable to such assets.

2) Any order of the High Court under-section (1) shall entitle the Administrator-General-

(a) to maintain any suit or proceeding for the recovery of such assets;
(b) if he thinks fit, to apply for letters of administration of estate of such deceased person;
(c) to retain out of the assets of the estate any fees chargeable under rules made under this Act; and
(d) to reimburse himself for all payments made by him in respect of such assets which a private administration might lawfully have made.
(1913-S.11).

Substituted by Act 8 of 1972, S.2(w.e.f. 25-2-1972).

8) on behalf of respondent No.2, it is argued that in view of the order dated 10.03.2003 (copy Annexure C-2 to the counter affidavit) passed in Testamentary Case No. 01 of 2001 by Hon'ble A.A. Desai, C.J., the petitioner has no right to be heard in the Testamentary Case No. 60 of 2001 before the lower Court. I have perused the said order. In said order, it is nowhere directed that the Administrator general will have no right to be heard in Testamentary Case No. 60 of 2001. On behalf of respondent No. 2 my attention was also drawn to the order dated 31.10.2003 (copy Annexure C-3 to the counter affidavit) passed in the Civil Misc. Application No. 9747 of 2003 and it is submitted that the petitioner has no right to object in the proceedings of grant of letters of Administration in favour of the respondent Trust. On perusal of said order, I find that nowhere the Administrator General has been restrained from showing to the lower Court that the petition filed by respondent No. 2 is not bonafide or the will elide is not a valid will. Rather, it is mentioned in said order that as to the locus standi of the Administrator General in Testamentary Case No.

60 of 2001, it will be decided by the Additional District Judge, Dehradun in Accordance with law. That being so, the learned lower Court should have heard the Administrator General as to his locus and his objections to Testamentary Case No. 60 of 2001, in accordance with law.

9) The impugned order dated 24.082001 passed on application 9-C2 (copy Annexure- 4 to the writ petition) in the Testamentary Case No. 60 of 2001, a sketchy order has been passed by learned lower Court, as under:

> *"Heard and perused the provisions of Section 8 of Indian Succession Act and perused the will. There is no need to issue notice to Administrator General. Hence. Issuance of notice is dispensed with."*

While passing the above order, learned lower Court has ignored constitutional provisions of Article 294 of the Constitution of India and acted presuming that the will relied by respondent No. 2 is genuine and unquestionable. Not only this, infact it appears that the learned lower Court has not even went through the provisions of Section 8 of the Indian Succession Act, which relates to the domicile of a illegitimate child and said provisions has nothing to do with the present case.

10) Similarly, the impugned order dated 06.01.2004, passed in the application 78-C2 moved by the Administrator General rejecting it on the ground that no right is accrued to the Administrator General as the proceedings relating to Letters of Administration are still pending and property has not vested in the State is against the law. This order also suffers from serious illegality as in a testamentary case, after the notices are published in the newspaper, everyone has got a right to show that the person claiming the property through a will is not

entitled to it. And the Administrator General was under its statutory duty to protect the property and right which he believes vested in the State. He could have done so only after being permitted to file the objections before the learned lower Court. Once the Letter of Administration is given, the Administrator General (petitioner) will be out of Court, and cannot say that the property has vested in this State.

11) For the reasons as discussed above, this Court is of the view that both the impugned orders dated 24.08.2001 and 06.01.2004 suffer from illegality and are liable to be quashed.

12) Accordingly, the writ petition is allowed. Both the impugned orders dated 24.08.2001 and 06.01.2004 are hereby quashed. The application 78-C2 moved before the trial Court in Testamentary Case No. 60 of 2001 shall stand allowed and the respondent No. 1 or the lower Court, to whom Testamentary Case No 60 of 2001 is transferred shall dispose of the petition of respondent No. 2 for Letter of Administration only after giving opportunity to the petitioner to show that the property has not vested in the State. No order as to costs.

(Prafulla C. Pant, J.)

Dt.: 22nd November, 2004
H.Negi